UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 9

In the Matter of

APPALACHIAN REGIONAL HEALTHCARE, INC.

and Case 9-CA-087837

SOUTHERN UNITED NURSES/ NATIONAL NURSES UNITED

MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER CASE TO THE BOARD AND MOTION FOR SUMMARY JUDGMENT

Upon a charge filed by Southern United Nurses/National Nurses United, herein called the Charging Party, against Appalachian Regional Hospital, Inc., herein called Respondent, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, on October 30, 2012, the Regional Director of Region 9 issued a Complaint and Notice of Hearing against Respondent (a copy with proof of service is attached to Acting General Counsel's Motion as Exhibit C). The complaint alleges in substance that Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to furnish the Charging Party with requested information necessary and relevant to Charging Party's performance of its duties as the exclusive collective bargaining representative of Respondent's employees. Specifically, the Charging Party requested that Respondent furnish it with the rates of pay for 36 bargaining unit nurses as well as rates of pay and hours worked for an additional nine bargaining unit nurses. The Charging Party explained in its request that it was requesting the information in order to calculate amounts owed to those bargaining unit members pursuant to a grievance settlement.

On November 14, 2012, Respondent filed its Answer of Respondent Appalachian Regional Healthcare, Inc. to the Complaint (a copy of that answer with proof of service is attached to

Acting General Counsel's Motion as Exhibit A). Respondent's answer unconditionally admits the filing and service of the charge, portions of Respondent's employer status, portions of the Charging Party's labor organization status, and that the Charging Party requested the information as alleged in the complaint. Respondent also admits that it has not provided the Charging Party with the requested information. However, Respondent denies that the requested information is necessary or relevant to the Charging Party's performance of its duties. Further, in response to most of the remaining allegations, Respondent denies the allegations "because Respondent is unable to ascertain the meaning of the phrase 'all material times,'" but goes on to admit the allegations in substance individually.

A. The requested information is presumptively relevant.

Respondent's unsupported denial of the relevance of the requested information is only a denial of the legal conclusions and consequences of its failure and refusal to provide the information. It is not a denial of any of the substantive facts alleged. As such, Respondent has not raised any issue requiring a hearing with respect to the Union's request for information. It is well settled that an employer has a duty to provide, on request, information relevant to bargainable issues. *See, e.g., Blue Cross & Blue Shield of New Jersey*, 288 NLRB 434, 436 (1988). When the requested information concerns wage rates, working hours, job descriptions, overtime work, and other information relating to employees in the bargaining unit, the information is presumptively relevant to bargainable issues and must be provided upon request without need on the part of the requesting party to establish specific relevance or particular necessity. *Id.; Andy Johnson Co., Inc*, 230 NLRB 308, 309 (1977). The bargaining unit members' rates of pay and hours worked requested in the present case unmistakably fall into the category of presumptively relevant information.

An employer is not empowered to make a unilateral determination that presumptively relevant information sought by the union is unnecessary or irrelevant to the union's statutory duties. To the contrary, such arguments have been rejected by the Board ("That the information appears unnecessary to an employer is obviously an inadequate ground for refusal..." *Amphlett Printing* Company, 237 NLRB 955, 956 (1978)). Further, the Board has long held that summary judgment is appropriate in instances where an employer has admitted to not providing presumptively relevant information. *See, e.g., Andy Johnson Co., Inc*, 230 NLRB 308 (1977); *The Trustees of the Masonic Hall*, 261 NLRB 436 (1982); *Grand Court-Adrian Associates*, 331 NLRB 806 (2000); *DirecTV U.S. DirecTV Holdings LLC and International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 947*, 358 NLRB 1 (2012).

Andy Johnson Co, Inc. is particularly instructive on this point. In that case, a complaint issued alleging that the union requested certain presumptively relevant information including names, addresses, and job classifications of respondent's unit employees for about a 2 year period. Respondent filed an answer to the complaint admitting in part, and denying in part, the allegations in the complaint, admitting that it did not provide the union with the requested information without advancing any reason for not providing the information to the union.

Counsel for the General Counsel filed a Motion for Summary Judgment. In a Cross-Motion for Summary Judgment, respondent defended its refusal to provide any of the information to the Union on the ground that the Union's demand presented an undue burden on respondent, and the Board found that this was not sufficient to rebut the presumption of relevancy of the union's request for information insofar as it applied to unit employees and granted the General Counsel's Motion for Summary Judgment with respect to the presumptively relevant information. Here, as in Andy Johnson Co, Inc., Respondent's answer admits that the Charging Party requested

information concerning bargaining unit members but offers only a bare denial of the relevance and necessity of the presumptively relevant information. As the above-cited cases demonstrate, such a baseless denial of necessity and relevance of presumptively relevant information, raising no issue of material facts, is insufficient to rebut the presumption of relevance and necessitate a hearing. Since all of the information requested by the Charging Party is presumptively relevant, and since no material issues of fact exist with respect to Respondent's refusal to furnish any of the information sought, summary judgment is warranted as a matter of law.

B. Respondent's denials based on uncertainly concerning the phrase 'all material times' is not denial of material facts sufficient to necessitate a hearing.

Respondent's answer denies certain paragraphs of the compliant on the basis that
Respondent cannot ascertain the meaning of the phrase 'all material times.' However, in each
instance, Respondent goes on to admit the factual allegations of the paragraph. Thus,
Respondent admits that it is a corporation with an office and place of business in Lexington,
Kentucky, which place of business has been engaged in the operation of hospitals in the
Commonwealth of Kentucky and State of West Virginia providing inpatient and outpatient
medical care; that it is an employer for the purposes of Section 2(2), (6), and (7) of the Act, and
that it is a healthcare institution within the meaning of Section 2(5) of the Act; that the Union is a
labor organization within the meaning of Section 2(5) of the Act; that it has recognized the
Union in collective bargaining agreements as the bargaining representative for employees
covered by the collective bargaining agreements; and that the Charging Party has acted as the
exclusive collective bargaining representative of employees covered by those collectivebargaining agreements as set forth in the complaint. Further, Respondent never asserts that the
aforementioned allegations were not true at any potentially relevant time. Inasmuch as
Respondent has admitted all of the relevant facts listed above, its denials are insufficient, there

are no genuine issues warranting a hearing, and the Acting General Counsel's Motion for Summary Judgment and relief requested should be granted.

Conclusion

WHEREFORE, Counsel for the Acting General Counsel submits that the pleadings herein demonstrate that Respondent has not denied any substantive factual issues raised by the complaint and there is no genuine issue of fact as to any allegation in the complaint herein.

Thus, there are no unresolved questions requiring an evidentiary hearing before an administrative law judge. Counsel for the Acting General Counsel, therefore, moves that the Board grant the relief sought in the accompanying Motion for Summary Judgment.

Dated at Cincinnati, Ohio this 10th day of December 2012.

Respectfully submitted,

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